



Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0028; Notice 2]

Morgan Olson, LLC, Denial of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of Petition Denial

SUMMARY: Morgan Olson, LLC (Morgan Olson)¹, has determined that certain model year 2009, 2010, and 2011 Morgan Olson walk-in van-type trucks having a gross vehicle weight rating (GVWR) over 4,536 kg and manufactured between September 1, 2009, and January 18, 2012, do not fully comply with paragraph S4.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components*. Morgan Olson has filed an appropriate report dated January 19, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Morgan Olson has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. The National Highway Traffic Safety Administration (NHTSA) published

¹Morgan Olson is a manufacturer of motor vehicles.

a notice of receipt of the petition, with a 30-day public comment period, on March 29, 2012, in the Federal Register (77_FR_19055). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2012-0028."

CONTACT INFORMATION: For further information on this decision contact Mr. Tony Lazzaro, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-5304, facsimile (202) 366-7002.

RELEVANT REQUIREMENTS OF FMVSS NO. 206: FMVSS No. 206 paragraph S4.2.1 requires in pertinent part that each sliding door system shall be equipped with either: (a) at least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. The door closure warning system shall be located where it can be clearly seen by the driver.

A "primary door latch" is defined in FMVSS No. 206 paragraph S3 as "a latch equipped with both a fully latched position and a secondary latch position and is designated as a 'primary door latch' by the manufacturer." A "secondary latched position" refers to "the coupling condition of the latch that

retains the door in a partially closed position." FMVSS No. 206 paragraph S3.

A "door closure warning system" is defined in FMVSS No. 206 paragraph S3 as "a system that will activate a visual signal when a door latch system is not in its fully latched position and the vehicle ignition system is activated."

Vehicles involved: Affected are approximately 6430 Morgan Olson model year 2009, 2010, and 2011 walk-in van-type trucks.

Noncompliance: Morgan Olson states that the affected vehicles do not contain a primary door latch system or door closure warning system as prescribed by paragraph S4.2.1 of FMVSS No. 206.

SUMMARY OF MORGAN OLSON'S ANALYSIS AND ARGUMENTS: By way of background, the sliding door latch requirements contained in paragraph S4.2.1 of FMVSS No. 206 were adopted in February 2007 as part of a broader upgrade to the Agency's existing door latch and retention requirements. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components, Final Rule, 72 FR 5385 (Feb. 6, 2007) [hereinafter 2007 Final Rule].* The effective date of these requirements was September 1, 2009.

As set forth in Morgan Olson's noncompliance report, as a result of an erroneous interpretation as to the scope of FMVSS No. 206's application, Morgan Olson mistakenly believed that the requirement for either a primary door latch system or door

closure warning system applied only to its vehicles having a GVWR under 4,536 kg.

In describing the operation of the affected doors Morgan Olson explains that when the sliding door is closed but not latched, there is a 1/2 inch gap between the door and its frame. Morgan Olson states that therefore, the rubber seal in the door jam as well as the exterior paint are clearly visible. Morgan Olson further states that when the door is latched, none of this is visible. Morgan Olson also explains that its customers are mostly delivery companies whose drivers are trained commercial drivers, and that a trained commercial driver, such as one driving a walk-in van manufactured by Morgan Olson, would immediately notice this gap and realize that the door is not latched. Morgan Olson also asserts that even if the driver did not notice that the door was not latched by means of observing the 1/2 inch gap, the door would slowly begin to slide open as the vehicle began to accelerate, which a driver would certainly notice. Morgan Olson contends that if the sliding door is not latched, this would be apparent to the driver as soon as he accelerates.

In addition, Morgan Olson argues that this noncompliance in walk-in van type vehicles is distinguishable from the primary focus of FMVSS No. 206 sliding door standards. Morgan Olson states that in adopting the standards, NHTSA noted a particular

concern with sliding door failures in passenger vans, which often contain children in the back seat(s)². Morgan Olson explains that with passenger vans, the sliding doors are situated behind the driver and therefore out of the driver's line of sight, and that this is not true for the subject trucks that are used for commercial purposes and driven by commercial drivers without passengers.

In summary, Morgan Olson contends that the noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120, should be granted.

COMMENTS: NHTSA published a notice of the petition in the Federal Register to allow an opportunity for members of the public to present information, views, and arguments on the subject petition. As noted earlier, no comments were received. The Agency notes that an absence of opposing argument and data does not require the Agency to grant the petition.³

² *Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components, Final Rule*, 72 FR 5385, 5387 (Feb. 6, 2007).

³ *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance*, 75 FR 507, 510 (Jan. 5, 2010).

NHTSA'S CONSIDERATION OF MORGAN OLSON'S INCONSEQUENTIALITY

PETITION:

General Principles: Federal motor vehicle safety standards are adopted only after the Agency has determined, following notice and comment, that the standards are objective and practicable and "meet the need for motor vehicle safety." See 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118-30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be "inconsequential" to motor vehicle safety. "Inconsequential" is not defined either in the statute or in NHTSA's regulations. Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The relevant issue in determining inconsequentiality is whether the noncompliance in question is likely to significantly increase the safety risk to individuals of accidents or to individual occupants who

experience the type of injurious event against which the standard was designed to protect. *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897 (Apr. 14, 2004).

There have been instances in the past where NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety, such as noncompliances concerning labeling where the discrepancy with the safety standard was determined not to lead to any misunderstanding, especially where sources of the correct information were available (e.g. in the vehicle owner's manual). *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004).

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a standard is substantially higher and more difficult to meet. Consequently, the Agency has determined that only a few such noncompliances are truly inconsequential. *Id.*

In their petition, Morgan Olson argues that when the sliding doors are closed but not latched, there is a small (1/2 inch) gap between the door and the frame. Moreover, Morgan Olson asserts that even if the driver does not notice the gap in the door prior to driving the vehicle, as the vehicle begins to

move the door will slide open and alert the driver. Morgan Olson further states that with passenger vans, the sliding doors are situated behind the driver and out of their line of sight and that this is not the case with commercial drivers who will be immediately able to see either a gap or the door sliding open if it is not latched.

FMVSS No. 206 requires that a sliding door system be equipped with either (a) at least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. Since the noncompliant vehicles are equipped with a door latch system with a fully latched position (but not a primary door latch system), in order to comply with FMVSS No. 206 the vehicles would also need to have a door closure warning system. Such a system is automatic and does not require the driver to make observations of the door. The subject vehicles do not have such a system. Without a warning system, the driver would have to look away from driving to see a door gap. The Agency does not consider a door gap to be a sufficient alert to the driver that the door is not fully latched. The Notice of Proposed Rulemaking for the 2007 amendments to FMVSS No. 206 explained the scope of the safety risks associated with the ejection of vehicle occupants through vehicle doors. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components and Side Impact Protection,*

Notice of Proposed Rulemaking, 69 FR 75020, 75024-75025. The Agency noted that "[d]oor ejections, due to non-rollover door openings, account for 23 percent of the total non-rollover ejections with known routes . . . [and of] those ejected through a sliding door, each year approximately 20 people are killed and 30 people are seriously injured, based on the 1995-2003 data from NASS." *Id.* Based on this safety risk analysis, the Agency concluded that "this exposure is [not] acceptable when measures can be taken to minimize the likelihood that a sliding door would open in a crash." 69 FR 75025. Accordingly, the Agency proposed the FMVSS No. 206 side sliding door latch requirements to "assure vehicle occupants that a sliding door is completely closed." 69 FR 75026.

Morgan Olson's arguments in support of its petition do not allay these safety concerns. Morgan Olson's petition acknowledges that the vehicle driver may not notice the small gap in the door before the vehicle begins to move. Moreover, having the door unexpectedly slide open while the vehicle is driven can create a potential distraction to the driver, especially considering any attempts by the driver to close the door while the vehicle is in motion. In addition, accidents can occur even at low speeds when a vehicle is accelerated into motion, and may include impact with another vehicle including a vehicle moving at higher speed. Therefore, in light of these

safety risks, the Agency finds that the door gap on the subject vehicles is not an acceptable replacement for a door closure warning system.

Morgan Olson also asserts that the sliding door standards were "particularly concerned with children riding in the rear seats of passenger vans." Although the Agency did note in the NPRM that it was "[a]dditionally . . . concerned that the individuals with the greatest exposure to sliding door failures are children," 69 FR 75025, the Agency never indicated that child passenger safety was the only safety concern addressed by the standard. In short, the Agency believes that there are valid concerns that occupants other than children of the subject vehicles are exposed to an increased risk of accidents and injuries, particularly those associated with occupant ejection, compared to occupants of compliant vehicles.

In addition, the Agency is aware of at least one occupant ejection through an open sliding side door of a commercial vehicle similar to those that are the subject of this petition. A walk-in van-type delivery truck was involved in an accident in 2009 at an intersection in Florida in which the driver of the delivery truck was ejected through an open sliding side door and sustained injuries. The delivery truck, after being stopped at a stop sign, entered the intersection and struck the side of a crossing vehicle causing the vehicles to become engaged and spin

together. The delivery truck driver, who was not wearing a safety belt, was ejected into the roadway.⁴

As noted earlier, the subject noncompliance was the result of Morgan Olson's previous misunderstanding that the requirement for either a primary door latch system or door closure warning system applied only to its vehicles having a GVWR under 4,536 kg. Applicability of the standard to vehicles Over 4,536 kg GVWR was addressed by the Agency in response to the Final Rule, Petitions for Reconsideration (see 75_FR_7370). In response to a question from TriMark Corporation dealing with applicability of the standard to Class 7/8 heavy trucks in excess of a GVWR of 4,536 kg (10,000 lb), the Agency stated "Regarding Class 7/8 heavy trucks, these vehicles fall under the definition of truck as defined in 49 CFR 571.3. FMVSS No. 206 applied to trucks, regardless of their GVWR, prior to the February 2007 final rule, as does the amended FMVSS No. 206. S2 of amended FMVSS No. 206 states that the standard applies to ``passenger cars, multipurpose passenger vehicles, and trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kg or less'' (emphasis added). In other words, the February 2007 final rule applies to all passenger cars, multipurpose passenger vehicles,

⁴Florida Department of Highway Safety and Motor Vehicles; HSMV Crash Report Number 90163273, dated January 6, 2009.

and trucks, regardless of their GVWR, and is also applicable to buses with a GVWR of 4,536 kg (10,000 lb) or less.”⁵

Decision: In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Morgan Olson’s petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

If Morgan Olson believes that vehicles it will produce in the future should not be subject to any currently applicable FMVSS No. 206 requirements, Morgan Olson may consider petitioning the Agency for rulemaking. The appropriate type of petition to request a change in a rule is one filed under 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Non-Compliance Orders*.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

⁵ 75FR7378

Issued on: **September 6, 2012**

Nancy Lummen Lewis
Associate Administrator
for Enforcement

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